

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

IN RE: Frederick J. Bilter, Jr.
Chapter 13 Debtor

Case No. 05-37702-DOT

MEMORANDUM OPINION AND ORDER

Hearing was held June 20, 2007, on a creditor's objection to debtor's notice of voluntary conversion from chapter 13 to chapter 7. For the reasons set forth below, the court will overrule the objection and order the case converted.

Findings of Fact

Debtor Frederick J. Bilter, Jr., filed a petition under chapter 13 of the Bankruptcy Code on September 1, 2005. No chapter 13 plan has been confirmed, although debtor has made plan payments to the trustee in the total amount of \$10,850.00. Creditor Delia B. Halstead, by counsel, filed an objection to confirmation and motion to dismiss the case in response to debtor's fourth amended chapter 13 plan filed on January 9, 2007. Hearing on the objection and motion was held April 18, 2007, at which time the court learned that a liquidated unsecured claim in the amount of \$328,511.37 had been filed by Empire Petroleum. On the filing date of this case the relevant limit of debt for chapter 13 eligibility as provided by Bankruptcy Code § 109(e) was \$307,675.00. Accordingly, the court orally ruled in open court on April 18 that the case would be dismissed because the amount of debtor's debt exceed the eligibility limit.

On May 9, 2007, debtor filed a notice of voluntary conversion seeking to convert his chapter 13 case to a case under chapter 7. (At the time debtor's motion was filed, no sketch order of dismissal had been filed with the court pursuant to the bench ruling of April 18.) The creditor

subsequently filed an objection to the debtor's notice of voluntary conversion. Hearing was held June 20, 2007, for the court to decide whether to dismiss the case or allow conversion to chapter 7. The court took the issue under advisement and requested the parties to file memoranda of law, which have been received.

Conclusions of Law

A ruling of the court is not effective until reduced to written order entered on the docket. Moreover, the court is not bound by the prior oral bench ruling of April 18. Here, the court finds the circumstances have changed since April 18, and debtor's notice of voluntary conversion may be considered on its merits.

The creditor argues that because debtor exceeded the eligibility limits for chapter 13 set forth in 11 U.S.C. § 109(e), he is not entitled to consideration as a "debtor" under chapter 13 who may voluntarily convert his case to chapter 7. In essence, the creditor argues that debtor's case filing lacks a jurisdictional basis, and debtor's only option will be to re-file under currently applicable law.

To the contrary, case law supports the conclusion that a debtor's chapter 13 case may be converted to another chapter even after a finding of § 109(e) ineligibility. According to these cases, the chapter 13 debt limitations provided by § 109(e) do not impact the bankruptcy court's subject matter jurisdiction but instead determine only the debtor's eligibility for relief. In re Wenberg, 94 B.R. 631, 637 (B.A.P. 9th Cir. 1988) *aff'd* 902 F.2d 768 (9th Cir. 1990). Wenberg also noted that the definition of "debtor" in the bankruptcy code encompasses title 11 in its entirety. Thus a person may be ineligible to be a debtor under one chapter but may be a debtor based on eligibility for any chapter under the title. Id. The Court of Appeals for the Eighth Circuit has also held that § 109(e) does not restrict the bankruptcy court's jurisdiction to enter an

order converting a case where a debtor is ineligible for relief under chapter 13. Rudd v. Laughlin, 866 F.2d 1040 (8th Cir. 1989). Finally, this approach has been followed by a district court and a bankruptcy court in the Fourth Circuit. Shaw v. Ehrlich, 294 B.R. 260, 270 (W.D. Va. 2003); In re Tatsis, 72 B.R. 908, 910–11 (Bankr. W.D.N.C. 1987).

Accordingly, debtor is not precluded from converting his case to chapter 7 even though he exceeded the eligibility limits for chapter 13 as set forth in § 109(e). As the court finds no compelling reason to dismiss the case, debtor's conversion motion will be granted. Of course, debtor's conversion to chapter 7 does not shield him from challenges to his good faith in filing or his conduct during the course of the chapter 13 or chapter 7.

Accordingly,

IT IS ORDERED that creditor Delia B. Halstead's motion to dismiss is DENIED; and

IT IS ORDERED that creditor Delia B. Halstead's objection to debtor's notice of voluntary conversion is OVERRULED; and

IT IS FURTHER ORDERED that debtor's notice of voluntary conversion is allowed, and debtor's case is converted to one under Chapter 7 of the Bankruptcy Code. A separate order converting the case will be entered.

SIGNED: _____

/s/ Douglas O. Tice Jr.
DOUGLAS O. TICE JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

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